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12 Attorneys for Defendant  
13 GOOGLE INC.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Case No. 5:12-cv-01382-PSG

**CONSOLIDATED CLASS ACTION**

IN RE GOOGLE, INC. PRIVACY POLICY  
LITIGATION

**DEFENDANT GOOGLE INC.'S ANSWER TO  
PLAINTIFFS' CONSOLIDATED SECOND  
AMENDED CLASS ACTION COMPLAINT**

Ctrm: 5 - 4th Floor  
Judge: Honorable Paul Singh Grewal

Defendant Google Inc. (“Google”), by its undersigned counsel, hereby answers Plaintiffs’ Consolidated Second Amended Class Action Complaint (“SAC”) as follows, based on information reasonably available to Google at this time, reserving its right to amend this Answer based on later-discovered information:

### **NATURE OF THE ACTION<sup>1</sup>**

1. This paragraph contains no allegations to which a response is required.
2. Admitted that the figures alleged were approximately correct as of the filing date of the SAC. Otherwise, admitted.
3. Admitted that the figures alleged were approximately correct as of the filing date of the SAC. Otherwise, admitted.
4. Admitted as to the cited 2011 and 2012 figures, and that Google’s 2013 revenues exceeded its 2012 revenues.
5. This paragraph contains no allegations relevant to any remaining cause of action.
6. This paragraph contains no allegations relevant to any remaining cause of action.
7. This paragraph contains no allegations relevant to any remaining cause of action.
8. This paragraph contains no allegations relevant to any remaining cause of action.
9. This paragraph contains no allegations relevant to any remaining cause of action.
10. This paragraph contains no allegations relevant to any remaining cause of action.
11. This paragraph contains no allegations relevant to any remaining cause of action.
12. This paragraph contains no allegations relevant to any remaining cause of action.
13. This paragraph contains no allegations relevant to any remaining cause of action.
14. This paragraph contains no allegations relevant to any remaining cause of action.
15. This paragraph contains no allegations relevant to any remaining cause of action.
16. This paragraph contains no allegations relevant to any remaining cause of action.
17. Admitted that users of Android devices must have a Google account to access Google Play. This paragraph contains no other allegations relevant to any remaining cause of action.

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<sup>1</sup> Google neither admits nor denies the contents of the various headings and subheadings in the Consolidated Second Amended Class Action Complaint, which are reproduced herein solely for convenience.

1 18. Denied.

2 19. Denied.

3 20. Denied that Google “is disclosing certain personal information of Android device users to  
4 third-party application developers, subjecting such users to heightened and unexpected risks as well as  
5 consuming additional battery power and bandwidth in the process . . . .” This paragraph contains no  
6 other allegations relevant to any remaining cause of action.

7 **JURISDICTION AND VENUE**

8 21. Admitted that this Court previously had federal question jurisdiction over claims that have  
9 since been dismissed, and has exercised supplemental jurisdiction over the remaining state common law  
10 claims. Denied that Plaintiffs’ claims meet the \$5,000,000 aggregate threshold for Class Action Fairness  
11 Act jurisdiction.

12 22. Admitted that this Court has personal jurisdiction over Google.

13 23. Admitted.

14 24. Admitted.

15 **THE PARTIES**

16 25. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
17 on that basis denies them.

18 26. Mr. Nisenbaum is no longer a party to this action, all claims stated by him having been  
19 dismissed.

20 27. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
21 on that basis denies them.

22 28. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
23 on that basis denies them.

24 29. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
25 on that basis denies them.

26 30. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
27 on that basis denies them.

31. Google lacks sufficient information to admit or deny the allegations of this paragraph, and on that basis denies them.

32. Denied to the extent that Google provides some products and services for which it charges users. Otherwise, admitted that Google's primary business model is advertising-supported.

**PLAINTIFFS' CLASS ALLEGATIONS**

33. This paragraph contains no allegations relevant to any remaining cause of action.

34. This paragraph contains no allegations relevant to any remaining cause of action.

35. This paragraph contains no allegation to which a response is required.

36. This paragraph contains no allegation to which a response is required.

**NUMEROSITY**

37. This paragraph contains no allegations relevant to any remaining cause of action.

38. Denied to the extent this paragraph states or implies that Google knows the actual identities of purported subclass members. Admitted that Google has email addresses provided by each putative Android App Disclosure Class member, and that to the extent those addresses are both current and valid, notice to those email addresses is practicable.

**COMMON QUESTIONS OF LAW AND FACT**

39. Denied.

a. This subparagraph contains no question relevant to any remaining cause of action.

b. This subparagraph contains no question relevant to any remaining cause of action.

c. This subparagraph contains no question relevant to any remaining cause of action.

d. This subparagraph contains no question relevant to any remaining cause of action.

e. This subparagraph contains no question relevant to any remaining cause of action.

f. This subparagraph contains no question relevant to any remaining cause of action.

g. This subparagraph contains no question relevant to any remaining cause of action.

h. This subparagraph contains no question relevant to any remaining cause of action.

i. This subparagraph contains no question relevant to any remaining cause of action.

j. This subparagraph contains no question relevant to any remaining cause of action.

k. This subparagraph contains no question relevant to any remaining cause of action.



**B. Google.com**

52. This paragraph contains no allegations relevant to any remaining cause of action.

53. This paragraph contains no allegations relevant to any remaining cause of action.

**C. Gmail**

54. This paragraph contains no allegations relevant to any remaining cause of action.

55. This paragraph contains no allegations relevant to any remaining cause of action.

56. This paragraph contains no allegations relevant to any remaining cause of action.

**D. Google+**

57. This paragraph contains no allegations relevant to any remaining cause of action.

58. This paragraph contains no allegations relevant to any remaining cause of action.

59. This paragraph contains no allegations relevant to any remaining cause of action.

**E. YouTube**

60. This paragraph contains no allegations relevant to any remaining cause of action.

61. This paragraph contains no allegations relevant to any remaining cause of action.

**F. Maps**

62. This paragraph contains no allegations relevant to any remaining cause of action.

**G. Android and Google Play**

63. Admitted that the figure of 750 million activated devices was approximately correct as of the filing date of the SAC. Google lacks sufficient information to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

64. Admitted.

65. Admitted that Android users must have or create a Google account to access Google Play. The remainder of this paragraph contains no allegations relevant to any remaining cause of action.

66. This paragraph contains no allegations relevant to any remaining cause of action.

67. Denied.

68. Denied.

**H. Other Products**

69. This paragraph contains no allegations relevant to any remaining cause of action.

70. This paragraph contains no allegations relevant to any remaining cause of action.

71. This paragraph contains no allegations relevant to any remaining cause of action.

**Google vs. Facebook: Background**

72. This paragraph contains no allegations relevant to any remaining cause of action.

73. This paragraph contains no allegations relevant to any remaining cause of action.

74. This paragraph contains no allegations relevant to any remaining cause of action.

75. This paragraph contains no allegations relevant to any remaining cause of action.

76. This paragraph contains no allegations relevant to any remaining cause of action.

77. This paragraph contains no allegations relevant to any remaining cause of action.

**Conflicting Terms in Privacy Policies Prior to March 1, 2012**

78. This paragraph contains no allegations relevant to any remaining cause of action.

79. Admitted that Google has maintained a general privacy policy since at least 1999, and that it has been modified from time to time. Admitted that the quoted language has appeared in at least some versions of the Google general privacy policy. Except as otherwise admitted herein, denied.

80. Admitted that prior to March 1, 2012, some individual Google products and services had product-specific terms of service and/or privacy policies, and that those terms of service and policies often referred to the Google general privacy policy and/or other privacy policies.

81. Denied that any document by that name existed. Admitted that the October 2008 version of the “Google Privacy Policy for Android-powered phones” contained the quoted language. Denied that it was in effect through February 29, 2012.

82. This paragraph contains no allegations relevant to any remaining cause of action.

83. This paragraph contains no allegations relevant to any remaining cause of action.

84. Google lacks sufficient information to admit or deny the allegations of this paragraph, and on that basis denies them. To the extent this paragraph is intended to paraphrase the terms of a particular document, any such document speaks for itself.

85. Google lacks sufficient information to admit or deny the allegations of this paragraph, and on that basis denies them. To the extent this paragraph is intended to paraphrase the terms of a particular document, any such document speaks for itself. The remainder of this paragraph consists of legal

argument unrelated to any remaining cause of action, to which no response is required; to the extent it states any other facts or allegations relevant to the remaining claims in this action, they are denied.

86. This paragraph contains no allegations relevant to any remaining cause of action.

87. This paragraph contains no allegations relevant to any remaining cause of action.

88. This paragraph contains no allegations relevant to any remaining cause of action.

89. This paragraph contains no allegations relevant to any remaining cause of action.

90. This paragraph contains no allegations relevant to any remaining cause of action.

91. This paragraph contains no allegations relevant to any remaining cause of action.

92. This paragraph contains no allegations relevant to any remaining cause of action.

93. This paragraph contains no allegations relevant to any remaining cause of action.

94. This paragraph contains no allegations relevant to any remaining cause of action.

95. This paragraph contains no allegations relevant to any remaining cause of action.

96. This paragraph contains no allegations relevant to any remaining cause of action.

97. This paragraph contains no allegations relevant to any remaining cause of action.

98. This paragraph contains no allegations relevant to any remaining cause of action.

99. This paragraph contains no allegations relevant to any remaining cause of action.

100. This paragraph contains no allegations relevant to any remaining cause of action.

101. This paragraph contains no allegations relevant to any remaining cause of action.

102. This paragraph contains no allegations relevant to any remaining cause of action.

103. This paragraph contains no allegations relevant to any remaining cause of action.

104. This paragraph contains no allegations relevant to any remaining cause of action.

105. This paragraph contains no allegations relevant to any remaining cause of action.

106. This paragraph contains no allegations relevant to any remaining cause of action.

107. This paragraph contains no allegations relevant to any remaining cause of action.

108. This paragraph contains no allegations relevant to any remaining cause of action.

109. This paragraph contains no allegations relevant to any remaining cause of action.

**Emerald Sea: May 2010**

110. This paragraph contains no allegations relevant to any remaining cause of action.



111. This paragraph contains no allegations relevant to any remaining cause of action.

112. This paragraph contains no allegations relevant to any remaining cause of action.

113. This paragraph contains no allegations relevant to any remaining cause of action.

114. This paragraph contains no allegations relevant to any remaining cause of action.

115. This paragraph contains no allegations relevant to any remaining cause of action.

116. This paragraph contains no allegations relevant to any remaining cause of action.

117. This paragraph contains no allegations relevant to any remaining cause of action.

118. This paragraph contains no allegations relevant to any remaining cause of action.

119. This paragraph contains no allegations relevant to any remaining cause of action.

120. This paragraph contains no allegations relevant to any remaining cause of action.

121. This paragraph contains no allegations relevant to any remaining cause of action.

122. This paragraph contains no allegations relevant to any remaining cause of action.

123. This paragraph contains no allegations relevant to any remaining cause of action.

124. This paragraph contains no allegations relevant to any remaining cause of action.

125. This paragraph contains no allegations relevant to any remaining cause of action.

126. This paragraph contains no allegations relevant to any remaining cause of action.

127. This paragraph contains no allegations relevant to any remaining cause of action.

**Google's Concealed Disclosure of Android Users' Personal Information**

128. Admitted that users of Google Play are subject to, *inter alia*, the unified Google privacy policy. Admitted that prior to March 1, 2012, users of Android devices and Google Play were subject to terms of service and/or privacy policies specific to those devices and Google Play. Admitted that the privacy policies governing Google Wallet are set forth in the Google Wallet Privacy Notice. Except as otherwise admitted herein, denied.

129. Admitted that various Android devices were and are subject to user agreements and privacy policies governing certain disclosures to third parties. Denied that those agreements govern Google Wallet accounts. Except as otherwise admitted herein, denied.

130. Admitted that the October 2008 version of the "Google Privacy Policy for Android-powered phones" contained the quoted language.

131. Admitted that the Google Play terms of service refer to the Google Wallet privacy policy, and that the Google Play privacy policy is irrelevant to the Google Wallet provisions governing disclosures to merchants. Except as otherwise admitted herein, denied.

132. Admitted that the November 16, 2011 Google Checkout Privacy Policy contained the quoted language, and that previous versions contained similar language. Denied that the quoted language is “the only potentially relevant disclosure.” Except as otherwise admitted herein, denied.

133. Admitted that the pre-November 16, 2011 versions of the Google Checkout Privacy Policy contained the quoted language. Except as otherwise admitted herein, denied.

134. Admitted that the August 1, 2012 Google Wallet Privacy Notice contains the quoted language. Denied that it is the most recent version.

135. Denied.

136. Google lacks sufficient information to admit or deny the existence or contents of the referenced unidentified “news media” reports, and on that basis denies them. Google denies the allegations purportedly contained in those unidentified reports.

137. Admitted that Android users “are not notified of this automatic transmission,” as no such transmission occurs. Except as otherwise admitted herein, denied.

138. Google lacks sufficient information to admit or deny the accuracy of the quoted language in this paragraph, and on that basis, denies it. Google denies the remaining allegations of this paragraph.

139. Denied.

140. Admitted that some versions of the Google Privacy Policy for Android-powered phones contained the quoted language, and that the Google Privacy Policy for Android-powered phones does not govern Google Wallet transactions, and thus neither prohibits nor authorizes interactions with Google Wallet users or merchants. Except as otherwise admitted herein, denied.

141. Denied.

142. Google lacks sufficient information to admit or deny the allegations of this paragraph, and on that basis, denies them.

143. Google lacks sufficient information to admit or deny the allegations of this paragraph regarding third parties, and on that basis, denies them. Google denies the remaining allegations of this paragraph.

144. Denied.

**Plaintiffs' Injuries Resulting from Google's Privacy Practices**

145. Denied.

146. This paragraph contains no allegations relevant to any remaining cause of action.

147. Denied.

148. This paragraph contains no allegations relevant to any remaining cause of action. To the extent factual allegations contained in this paragraph are relevant to any remaining cause of action, denied.

149. This paragraph contains no allegations relevant to any remaining cause of action.

150. This paragraph contains no allegations relevant to any remaining cause of action.

151. This paragraph contains no allegations relevant to any remaining cause of action.

**A. Cost to Replace Android Devices**

152. This paragraph contains no allegations relevant to any remaining cause of action.

153. This paragraph contains no allegations relevant to any remaining cause of action.

154. This paragraph contains no allegations relevant to any remaining cause of action.

155. This paragraph contains no allegations relevant to any remaining cause of action.

156. This paragraph contains no allegations relevant to any remaining cause of action.

157. This paragraph contains no allegations relevant to any remaining cause of action.

158. This paragraph contains no allegations relevant to any remaining cause of action.

159. This paragraph contains no allegations relevant to any remaining cause of action.

160. This paragraph contains no allegations relevant to any remaining cause of action.

**B. Cost of Device Battery Power and Bandwidth**

161. Google lacks sufficient information to admit or deny the allegations of this paragraph, and on that basis, denies them.

1 162. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
2 on that basis, denies them.

3 163. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
4 on that basis, denies them.

5 164. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
6 on that basis, denies them.

7 165. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
8 on that basis, denies them.

9 166. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
10 on that basis, denies them.

11 167. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
12 on that basis, denies them.

13 168. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
14 on that basis, denies them.

15 169. Denied.

16 170. Denied.

17 171. Denied.

18 172. Denied.

19 173. Denied.

20 174. Denied.

21 **C. Invasion of Privacy Interests: Android App Disclosure Subclass**

22 175. This paragraph contains no allegations relevant to any remaining cause of action.

23 176. This paragraph contains no allegations relevant to any remaining cause of action.

24 177. This paragraph contains no allegations relevant to any remaining cause of action.

25 **D. Invasion of Privacy Interests: Gmail Users**

26 178. This paragraph contains no allegations relevant to any remaining cause of action.

27 179. This paragraph contains no allegations relevant to any remaining cause of action.

28 180. This paragraph contains no allegations relevant to any remaining cause of action.

181. This paragraph contains no allegations relevant to any remaining cause of action.

182. This paragraph contains no allegations relevant to any remaining cause of action.

183. This paragraph contains no allegations relevant to any remaining cause of action.

184. This paragraph contains no allegations relevant to any remaining cause of action.

**E. Unauthorized Access and Wrongful Disclosure of Communications**

185. This paragraph contains no allegations relevant to any remaining cause of action.

186. This paragraph contains no allegations relevant to any remaining cause of action.

187. This paragraph contains no allegations relevant to any remaining cause of action.

188. This paragraph contains no allegations relevant to any remaining cause of action.

189. This paragraph contains no allegations relevant to any remaining cause of action.

**F. Unauthorized Interception of Communications**

190. This paragraph contains no allegations relevant to any remaining cause of action.

191. This paragraph contains no allegations relevant to any remaining cause of action.

192. This paragraph contains no allegations relevant to any remaining cause of action.

193. This paragraph contains no allegations relevant to any remaining cause of action.

**Ongoing Governmental Investigations Regarding Google's Violations of the Privacy and Legal Rights of Its Users Demonstrate the Seriousness of the Injuries that Google's New Privacy Policy Has Inflicted on the Class**

194. Denied.

**A. FTC Penalty Concerning Google Buzz**

195. This paragraph contains no allegations relevant to any remaining cause of action.

196. This paragraph contains no allegations relevant to any remaining cause of action.

197. This paragraph contains no allegations relevant to any remaining cause of action.

198. This paragraph contains no allegations relevant to any remaining cause of action.

199. This paragraph contains no allegations relevant to any remaining cause of action.

200. This paragraph contains no allegations relevant to any remaining cause of action.

201. This paragraph contains no allegations relevant to any remaining cause of action.

202. This paragraph contains no allegations relevant to any remaining cause of action.

203. This paragraph contains no allegations relevant to any remaining cause of action.

204. This paragraph contains no allegations relevant to any remaining cause of action.

205. This paragraph contains no allegations relevant to any remaining cause of action.

206. Denied.

207. Admitted that “users did not know that Google was disclosing their personal information to third-party application developers each time they downloaded an application” because no such disclosure occurred. Google denies the remaining allegations of this paragraph.

208. This paragraph contains no allegations relevant to any remaining cause of action.

209. Admitted, as “this conduct” did not occur.

**B. FTC Penalty Concerning Double Click**

210. This paragraph contains no allegations relevant to any remaining cause of action.

211. This paragraph contains no allegations relevant to any remaining cause of action.

212. This paragraph contains no allegations relevant to any remaining cause of action.

213. This paragraph contains no allegations relevant to any remaining cause of action.

214. This paragraph contains no allegations relevant to any remaining cause of action.

215. This paragraph contains no allegations relevant to any remaining cause of action. To the extent any allegations of this paragraph relate to any remaining cause of action, Google denies them.

**C. The European Union’s Investigation of Google’s New Privacy Policy**

216. This paragraph contains no allegations relevant to any remaining cause of action.

217. This paragraph contains no allegations relevant to any remaining cause of action.

218. This paragraph contains no allegations relevant to any remaining cause of action.

219. This paragraph contains no allegations relevant to any remaining cause of action.

220. This paragraph contains no allegations relevant to any remaining cause of action.

221. This paragraph contains no allegations relevant to any remaining cause of action.

222. This paragraph contains no allegations relevant to any remaining cause of action.

223. This paragraph contains no allegations relevant to any remaining cause of action.

224. This paragraph contains no allegations relevant to any remaining cause of action.

225. This paragraph contains no allegations relevant to any remaining cause of action.

226. This paragraph contains no allegations relevant to any remaining cause of action.

227. This paragraph contains no allegations relevant to any remaining cause of action.

228. This paragraph contains no allegations relevant to any remaining cause of action.

229. This paragraph contains no allegations relevant to any remaining cause of action.

230. This paragraph contains no allegations relevant to any remaining cause of action.

231. This paragraph contains no allegations relevant to any remaining cause of action.

232. This paragraph contains no allegations relevant to any remaining cause of action.

233. This paragraph contains no allegations relevant to any remaining cause of action.

234. This paragraph contains no allegations relevant to any remaining cause of action.

235. This paragraph contains no allegations relevant to any remaining cause of action.

**Consumers Do Not Want Google to Aggregate Their Information**

236. This paragraph contains no allegations relevant to any remaining cause of action.

237. This paragraph contains no allegations relevant to any remaining cause of action.

238. This paragraph contains no allegations relevant to any remaining cause of action.

239. This paragraph contains no allegations relevant to any remaining cause of action.

240. This paragraph contains no allegations relevant to any remaining cause of action.

241. This paragraph contains no allegations relevant to any remaining cause of action.

242. This paragraph contains no allegations relevant to any remaining cause of action.

243. This paragraph contains no allegations relevant to any remaining cause of action.

244. This paragraph contains no allegations relevant to any remaining cause of action.

**TOLLING OF THE STATUTE OF LIMITATIONS**

245. This paragraph contains no allegations relevant to any remaining cause of action.

246. This paragraph contains no allegations relevant to any remaining cause of action.

247. This paragraph contains no allegations relevant to any remaining cause of action.

248. This paragraph contains no allegations relevant to any remaining cause of action.

249. This paragraph contains no allegations relevant to any remaining cause of action.

**CAUSES OF ACTION**

**A. Counts Brought On Behalf Of The Android Device Switch Subclass**

**COUNT I**

**VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

**California Civil Code § 1750 et seq.**

250. This Count has been dismissed.

251. This Count has been dismissed.

252. This Count has been dismissed.

253. This Count has been dismissed.

254. This Count has been dismissed.

255. This Count has been dismissed.

256. This Count has been dismissed.

257. This Count has been dismissed.

258. This Count has been dismissed.

259. This Count has been dismissed.

260. This Count has been dismissed.

261. This Count has been dismissed.

262. This Count has been dismissed.

263. This Count has been dismissed.

264. This Count has been dismissed.

**COUNT II**

**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

**Cal. Bus. & Prof. Code § 17200 et seq.**

265. This Count has been dismissed.

266. This Count has been dismissed.

267. This Count has been dismissed.

268. This Count has been dismissed.

269. This Count has been dismissed.



1 270. This Count has been dismissed.

2 271. This Count has been dismissed.

3 272. This Count has been dismissed.

4 **B. Counts Brought On Behalf Of The Android App Disclosure Subclass**

5 **COUNT III**

6 **BREACH OF CONTRACT**

7 273. Google incorporates by reference its responses set forth above.

8 274. This paragraph contains no allegations requiring a response.

9 275. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
10 on that basis, denies them.

11 276. Google lacks sufficient information to admit or deny the allegations of this paragraph, and  
12 on that basis, denies them.

13 277. Denied.

14 278. Google lacks sufficient information to admit or deny the allegations of the first sentence  
15 of this paragraph, and on that basis, denies them. Google denies the remaining allegations of this  
16 paragraph.

17 279. Denied.

18 280. Denied.

19 **COUNT IV**

20 **INTRUSION UPON SECLUSION**

21 281. This Count has been dismissed.

22 282. This Count has been dismissed.

23 283. This Count has been dismissed.

24 284. This Count has been dismissed.

25 285. This Count has been dismissed.

26 286. This Count has been dismissed.

27 287. This Count has been dismissed.

28 288. This Count has been dismissed.

**COUNT V**

**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

**Cal. Bus. & Prof. Code § 17200 et seq.**

289. Google incorporates by reference its responses set forth above.

290. This paragraph contains no allegations requiring a response.

291. Google lacks sufficient information to admit or deny the allegations of this paragraph, and on that basis, denies them.

292. This paragraph contains no allegations requiring a response.

293. Denied.

294. Denied.

295. Denied.

296. Google lacks sufficient information to admit or deny the allegations concerning Plaintiffs' mental state, and on that basis denies them. Google denies the remaining allegations of this paragraph.

297. Denied.

298. Denied.

299. This portion of this claim has been dismissed.

300. This paragraph contains no allegations requiring a response.

301. Denied.

302. This portion of this claim has been dismissed.

**C. Claims Brought On Behalf Of The Class**

**COUNT VI**

**INTRUSION UPON SECLUSION**

303. This Count has been dismissed.

304. This Count has been dismissed.

305. This Count has been dismissed.

306. This Count has been dismissed.

307. This Count has been dismissed.

308. This Count has been dismissed.

309. This Count has been dismissed.

**COUNT VII**

**BREACH OF CONTRACT**

310. This Count has been dismissed.

311. This Count has been dismissed.

312. This Count has been dismissed.

313. This Count has been dismissed.

314. This Count has been dismissed.

315. This Count has been dismissed.

316. This Count has been dismissed.

317. This Count has been dismissed.

318. This Count has been dismissed.

319. This Count has been dismissed.

320. This Count has been dismissed.

**COUNT VIII**

**VIOLATIONS OF THE FEDERAL WIRETAP ACT**

**18 U.S.C. § 2511, et seq.**

321. This Count has been dismissed.

322. This Count has been dismissed.

323. This Count has been dismissed.

324. This Count has been dismissed.

325. This Count has been dismissed.

326. This Count has been dismissed.

327. This Count has been dismissed.

328. This Count has been dismissed.

329. This Count has been dismissed.

330. This Count has been dismissed.

331. This Count has been dismissed.

332. This Count has been dismissed.

333. This Count has been dismissed.

334. This Count has been dismissed.

**COUNT IX**

**VIOLATIONS OF THE STORED ELECTRONIC COMMUNICATIONS ACT**

**18 U.S.C. § 2701, et seq.**

335. This Count has been dismissed.

336. This Count has been dismissed.

337. This Count has been dismissed.

338. This Count has been dismissed.

339. This Count has been dismissed.

340. This Count has been dismissed.

341. This Count has been dismissed.

342. This Count has been dismissed.

343. This Count has been dismissed.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE—CONSENT**

Plaintiffs' claims are barred by Plaintiffs' consent to the acts alleged.

**SECOND AFFIRMATIVE DEFENSE—ARTICLE III STANDING**

Plaintiffs' claims are barred by Plaintiffs' failure to truthfully allege any injury-in-fact sufficient to confer Article III standing.

**THIRD AFFIRMATIVE DEFENSE—ACQUIESCENCE**

Plaintiffs' claims are barred by Plaintiffs' acquiescence.

**FOURTH AFFIRMATIVE DEFENSE—NO FEDERAL JURISDICTION**

Plaintiffs' claims are barred by Plaintiffs' failure to allege claims subject to federal subject matter jurisdiction.

**FIFTH AFFIRMATIVE DEFENSE—INTERVENING ACTS**

Plaintiffs' claims are barred to the extent the complained-of injury resulted from the intervening acts of others.

**SIXTH AFFIRMATIVE DEFENSE—FAILURE TO MITIGATE**

Plaintiffs' claims are barred to the extent Plaintiffs failed to mitigate their alleged damages.

**SEVENTH AFFIRMATIVE DEFENSE—FAILURE OF CONSIDERATION**

Plaintiffs' claims are barred by to the extent any contract alleged to have been breached is void for failure of consideration.

**EIGHTH AFFIRMATIVE DEFENSE—NO RESTITUTION**

Plaintiffs' claims are barred to the extent Plaintiffs seek restitutionary remedies from a party to whom they have made no payments.

**NINTH AFFIRMATIVE DEFENSE—NO INJUNCTIVE RELIEF**

Plaintiffs' claims are barred to the extent Plaintiffs seek injunctive relief barring conduct that is no longer occurring and is unlikely of repetition.

**TENTH AFFIRMATIVE DEFENSE—ESTOPPEL**

Plaintiffs' claims are barred to the extent they are estopped by Plaintiffs' prior judicial statements or actions.

**PRAYER FOR RELIEF**

WHEREFORE, Google prays for the following relief:

- a. That Plaintiffs take nothing by their Complaint;
- b. That Class Certification of Plaintiffs' claims be denied;
- c. That Plaintiffs' plea for equitable relief be denied;
- d. That Google be awarded its reasonable fees and costs to the extent provided by law; and
- e. That judgment be entered in Google's favor on all causes of action.

Dated: August 27, 2014

DURIE TANGRI LLP

By: /s/ Michael H. Page  
MICHAEL H. PAGE

Attorneys for Defendant  
GOOGLE INC.

**CERTIFICATE OF SERVICE**

I certify that all counsel of record is being served on August 27, 2014 with a copy of this document via the Court's CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to all non-CM/ECF participants.

/s/ Michael H. Page

Michael H. Page